

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 5 of 1981

For Approval and Signature:

Hon'ble MISS JUSTICE R.M DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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LOHANA BHAGVANJI PRAGJI

Versus

RATANSINH GOKALDAS RAJDA

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Appearance:

MR JR NANAVATI for Petitioners

MR KG VAKHARIA for Respondent No. 1

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/08/2000

ORAL JUDGEMENT

Heard the learned advocates.

2. This appeal arises of the judgment and order dated 30th November, 1980 passed by the learned Asst.. Judge, Jamnagar in Regular Civil Appeal No. 83 of 1979 arising of the judgment and order dated 5th May, 1979 passed by the learned Civil Judge (JD), Khambalia in Regular Civil Suit no. 50 of 1974. The appellants are the original defendants.

3. The respondents-plaintiffs [hereinafter referred

to as, 'the Plaintiffs'] had instituted the above referred Regular Civil Suit No. 50 of 1974 against the present appellants claiming exclusive ownership of the suit premises being Ward No. 1-2, City Survey No. 99 situated in Hajam Pada area in the town of Khambaliya. The plaintiffs claimed that the suit property was purchased by their predecessor one Jamnadas Ladha on 21st June, 1946 by a registered sale deed from the predecessor in title one Gokaldas Narayanji Bhatia. The suit premises has been described in detail in the said sale deed. The suit premises has the entrance door [dela] on the southern side and inside the dela is a madh. Apart from the madh, the suit premises had a Fali [open court yard], a room, a warehouse, a shed [ek dhalia]. On the west of the suit premises was situated a house in possession of one Dhani Chatrabhuj Kanji. The said house on the west of the suit premises was purchased by one Bhagwanji Pragji, then a tenant in the said house, by a registered Sale Deed on 8th March, 1965. It appears that both the said houses - the one purchased by Jamnadas Ladha, the predecessor of the plaintiffs ie., the suit premises and the one purchased by Bhagwanji Pragji, the defendant no. 1 - originally belonged to one owner and the predecessor of the defendant no. 1 Bhagwanji Pragji was the tenant of the entire property. He appears to have given up the possession of part of the premises comprising the suit premises which was later sold to the aforementioned Jamnadas Ladha in the year 1946. Rest of the premises remained in possession of then tenant which was ultimately purchased by the defendant no. 1 in the year 1965 by the registered sale deed [Exh. 99]. In the year 1974 or thereabout, the plaintiffs; except the plaintiff no. 7, were residing at Bombay, while the plaintiff no. 7 was residing alone in the suit premises. The defendants started putting up certain windows and doors on the western wall of the suit premises. Feeling aggrieved, the plaintiffs instituted the above referred Regular Civil Suit No. 50 of 1974. The plaintiffs claimed that the suit premises including the madh [hereinafter referred to as, 'the suit madh'] was of the exclusive ownership and possession of the plaintiffs. The defendants had illegally started construction so as to encroach upon the plaintiffs' right to the said property. It was stated that originally there stood one door between the defendants' premises and the suit madh and a window which were permanently closed at the time the predecessor of the plaintiffs purchased the suit premises in the year 1946. The suit was contested by the defendants. The defendants claimed joint ownership of the suit madh and in support thereof, produced a Sanad [Exh. 89] issued by the City Survey Officer.

4. The plaintiffs relied upon the sale deed [Exh. 75] and the Sanad issued to them by the City Survey Officer [Exh. 76].

5. Mr. Nanavati has submitted that the Sanad Exh. 89 refers to the suit madh and the joint ownership of the suit madh. Besides, the Sanad issued to the petitioners [Exh. 76] does not refer to the suit madh. Therefore, the plaintiffs have failed to prove their exclusive ownership of the suit madh while the defendants have proved the joint ownership of the suit madh. I am unable to agree with the contention raised by Mr. Nanavati. The Sanads [Exh. 76 and Exh. 89] issued by the City Survey Officer cannot be said to be the proof of title. Besides, neither of the Sanads refer to the suit madh as such. It is contended that the nondh no. 3605 referred to in the Sanad Exh. 89 is the suit madh that is what the plaintiff has agreed in his deposition also. Be it noted that the rectangular piece shown as nondh no. 3605 is not identified with the suit madh. However, considering the deposition, even if it is believed that the nondh no. 3605 referred to in the Sanad Exh. 89 is the suit madh, it does not prove either the ownership or the possession of the defendants; exclusive or joint with the plaintiffs. On the contrary the sale deeds Exhs. 75 and 99 establish that the property sold to each of the parties was in their exclusive possession and of exclusive ownership. The sale deed Exh. 75 executed in favour of the plaintiffs on 21st June, 1946 clearly establishes that the suit premises including the suit madh was exclusively sold to the purchaser Jamnadas Ladha. Similarly, the sale deed Exh. 99 executed in favour of Bhagwanji Pragji, the defendant no.1, proves the exclusive title and possession of the defendant over the property sold to him without their being any reference to the suit madh. In my view, the lower Appellate Court has rightly upheld the claim of the plaintiffs of exclusive ownership of the suit madh and has rightly denied the claim of the defendants of a joint ownership of the suit madh. The sanads referred to hereinabove is not a proof of title and no claim for title can be based on such sanad alone.

6. In view of the above discussion, Regular Civil Suit No. 50 of 1974 is decreed. The stay operating, pending this appeal, is vacated. The defendants-appellants are directed to close the passage made for entering the suit madh in the chitri shown as 'CD' in the rough sketch Exh. 82. The defendants are

further directed to close the door and the window [Doka Bari] which existed even prior to the sale of the suit premises in the year 1946. The defendants will also remove the doors and windows placed in the western wall of the suit premises opening towards the suit premises. The defendants are permanently enjoined from putting up any construction so as to obstruct the exclusive ownership and the possession of the suit premises including the suit Madh by the plaintiffs.

7. Appeal is dismissed with costs throughout.

( MS R.M.Doshit, J)

Prakash\*